

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ENRIQUE ZAYAS,

Petitioner,

-against-

ROBERT ERCOLE, SUPERINTENDENT,
GREEN HAVEN CORRECTIONAL
FACILITY,

Respondent.

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AMON, United States District Judge.

NOT FOR PUBLICATION
MEMORANDUM & ORDER
08-CV-1037 (CBA)(RLM)

This Court has received the well-reasoned Report and Recommendation (“Recommendation”) of the Honorable Roanne L. Mann, United States Magistrate Judge, dated November 9, 2009, recommending that this Court deny petitioner Enrique Zayas’s (“Zayas” or “petitioner”) habeas corpus petition, filed on March 3, 2008. Zayas asserted three grounds for federal habeas relief pursuant to 28 U.S.C. § 2254: 1) ineffective assistance of trial counsel for counsel’s failure to move to suppress Zayas’s pretrial statement to detectives and for counsel’s failure to object to the prosecutor’s leading questions; 2) improper adjudication of Zayas as a persistent violent felony offender; and, 3) ineffective assistance of appellate counsel based on appellate counsel’s failure to raise on appeal an ineffective assistance of trial counsel claim, premised on trial counsel’s failure to challenge the court’s use of Zayas’s prior conviction from 1991 (“1991 conviction”) to enhance Zayas’s sentence in this case. Zayas filed a timely objection to the Recommendation, which principally reiterated his original claims. This Court has conducted a de novo review of the issues raised in the petition, and adopts the Recommendation as the opinion of the Court, with the exception of footnote 16.

Since Zayas has failed to make a “substantial showing of the denial of a constitutional right,” a Certificate of Appealability shall not issue. 28 U.S.C. § 2253(c). The Clerk of the Court is directed to enter judgment in accordance with this order and to close the case.

SO ORDERED.

Dated: Brooklyn, New York
April 8, 2010

/S/

Carol Bagley Amon
United States District Judge